

SWIDLER  
&  
BERLIN  
CHARTERED

DOCKET FILE COPY ORIGINAL

RECEIVED

JUL 10 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 10, 1997

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

**Re: Petition for Expedited Rulemaking to Establish Reporting Requirements and  
Performance and Technical Standards for Operations Support Systems,  
RM 9101**

Dear Mr. Caton:

Pursuant to the Commission's June 10, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Comments of Excel Communications, Inc., and a diskette containing the Comments in WordPerfect for Windows 5.1 format.

Please date-stamp the enclosed extra copy of the Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,



Dana Frix  
C. Joël Van Over

Counsel for Excel Communications, Inc.

Enclosures

cc: J. Christopher Dance  
Robbin Johnson  
Janice M. Myles, Common Carrier Bureau (2 copies and diskette)  
International Transcription Service (w/diskette)

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**RECEIVED**

**JUL 10 1997**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of:	)	
	)	
Petition for Expedited Rulemaking	)	RM 9101
To Establish Reporting Requirements and	)	
Performance and Technical Standards for	)	
Operations Support Systems	)	

**COMMENTS OF EXCEL COMMUNICATIONS, INC.  
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

J. Christopher Dance  
Robbin Johnson  
Excel Communications, Inc.  
8750 North Central Expressway  
Dallas, TX 75231  
(214) 863-8000 (Tel)  
(214) 863-8215 (Fax)

Dana Frix  
C. Joël Van Over  
Swidler & Berlin, Chtd.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)

Counsel for Excel Communications, Inc.

Dated: July 10, 1997

## TABLE OF CONTENTS

Executive Summary .....	iii
I. THE COMMISSION HAS JURISDICTION OVER OSS FUNCTIONS. ....	3
II. THE COMMISSION SHOULD REQUIRE EACH ILEC TO PRODUCE ALL INFORMATION RELATING TO HOW THE ILEC PROVIDES OSS FUNCTIONS AND PROCESSES FOR ITS OWN OPERATIONS, INCLUDING INTERNAL PERFORMANCE BENCHMARKS, STANDARD INTERVALS, AND MONITORING PRACTICES. ....	7
A. Only Full and Complete Disclosure By ILECs of All Information Relating to OSS Functions and Processes Will Permit the Commission to Enforce the Nondiscrimination Provisions of the Act. ....	7
B. For the Commission to Track Discriminatory Behavior Effectively, Disclosure Must Be an Ongoing Duty for all ILECs. ....	11
III. THE COMMISSION AND OTHER INTERESTED PARTIES DO NOT POSSESS ADEQUATE INFORMATION TO ESTABLISH PERMANENT, GENERALLY APPLICABLE PERFORMANCE BENCHMARKS AT THIS TIME .....	12
A. The Commission Should Implement Interim National Standards as a Floor for ILEC Performance, But Should Reject Any Proposal to Implement Permanent National Performance Benchmarks At This Time .....	12
B. Standardization of OSS Functions Will Promote Competitive Entry and Assist the Commission in Measuring Performance and Establishing Permanent Performance Benchmarks .....	13
IV. CONCLUSION .....	17

## EXECUTIVE SUMMARY

The Comments of Excel Communications, Inc. (“Excel”) may be summarized as follows:

**Commission Jurisdiction Over Access to Operations Support Systems (“OSS”):** The Federal Communications Commission (“Commission”) has clear jurisdiction over how incumbent local exchange carriers (“ILECs”) provide competitive local exchange carriers (“CLECs”) with access to OSS functions. As noted in the Petition for Expedited Rulemaking, Section 251(c) of the Telecommunications Act of 1996 (“1996 Act”) requires ILECs to provide nondiscriminatory access to OSS functions as an unbundled network element, and also to furnish OSS functions in a reasonable and nondiscriminatory fashion for carriers seeking to resell the ILECs’ services.<sup>1</sup> In addition, the Commission has authority to regulate the provision of access to OSS functions under Title II of the Communications Act of 1934, as amended by the 1996 Act (“Act”), which outlaws “unjust or unreasonable discrimination” by common carriers,<sup>2</sup> as well as under Section 271 of the 1996 Act, which permits the Commission to examine whether a Bell Operating Company (“BOC”) is providing “nondiscriminatory access” to network elements, including OSS, in the context of BOC applications to provide in-region interLATA services.<sup>3</sup>

---

<sup>1</sup> *Petition for Expedited Rulemaking by LCI International Telecom Corp. and Competitive Telecommunications Association (CompTel)*, at 4 (filed May 30, 1997) (“Petition”). See 47 U.S.C. § 251(c)(3) and (4) (1996).

<sup>2</sup> 47 U.S.C. § 202(a) (1996).

<sup>3</sup> *Id.* at § 271(c)(2)(B)(ii).

**Mandatory Public Disclosure of All Information Relating to ILEC OSS Functions:**

Given the Commission's clear jurisdiction over OSS functions, Excel urges the Commission to mandate that each ILEC fully disclose all information relating to how it self-provisions OSS processes and functions, including any internally-developed materials descriptive of the support process. Indeed, mandated disclosure of all pertinent performance benchmarks and other information relating to the administration of OSS processes by ILECs constitutes a fundamental and unavoidable first step in developing appropriate nationwide benchmarks and promoting competition in local exchange markets. The Commission should also require periodic updates of OSS information by every ILEC, to ensure that any performance benchmarks ultimately established remain nondiscriminatory.

**Permanent National Performance Standards Would Be Premature:** The Commission should not prematurely adopt the Local Competition Users Group ("LCUG") recommended benchmarks or any other specific proposals as permanent minimum nationwide standards of performance. The Commission must first give itself and interested parties the opportunity to review and comment upon the released OSS information before imposing final benchmarks and intervals for performance. The Commission should instead consider adopting the LCUG proposal as an interim measure to ensure that CLECs obtain quality access to ILEC OSS functions, while also requiring each ILEC that provides itself or other carriers with service that is superior to the LCUG guidelines to provide that level of service to all carriers. The Commission should also promote the standardization of OSS by directing the ILECs to standardize their systems in conjunction with an industry working group, and in doing so give private standardization initiatives access to the ILECs'

OSS information so that these private initiatives can recommend a standardized approach for Commission consideration.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:	)	
	)	
Petition for Expedited Rulemaking	)	RM 9101
To Establish Reporting Requirements and	)	
Performance and Technical Standards for	)	
Operations Support Systems	)	

**COMMENTS OF EXCEL COMMUNICATIONS, INC.  
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

Excel Communications, Inc., by undersigned counsel and pursuant to the Public Notice issued by this Commission on June 10, 1997, hereby submits its Comments in support of the Petition for Expedited Rulemaking filed by LCI International Telecom Corp. ("LCI") and Competitive Telecommunications Association ("CompTel") (collectively, "Petitioners"). To assure competitive access to OSS functions, Excel specifically requests that the Commission require each incumbent local exchange carrier ("ILEC") to disclose in public Commission filings all information relating to how it provides OSS functions and processes for itself, including any internally-developed materials that are descriptive of the how the OSS processes are administered by the ILEC. Such disclosure so will help to ensure that CLECs obtain nondiscriminatory access to those OSS functions and support processes, and assist each CLEC's staff in efficiently managing its own OSS processes and interfacing with any ILEC's OSS. Without such information it will be impossible to assure that ILECs are not using their bottleneck control of OSS to gain a competitive advantage over CLECs.

Excel is the ultimate parent company of Excel Telecommunications, Inc., the fifth largest long distance company in the United States in terms of presubscribed lines. Excel's operating subsidiaries are authorized by numerous state public service commissions to provide resold

interexchange telecommunications services nationwide. Additionally, Excel's operating subsidiaries currently are authorized to provide competitive local exchange services in approximately 30 states and have applications pending for competitive local exchange authority in the remaining 20 states. Excel's subsidiaries offer a diversified array of telecommunications services, including residential service, commercial service, paging service and calling cards. Excel's unique marketing infrastructure utilizes independent representatives that are themselves purchasers of Excel's services to reach similarly situated residential consumers. Indeed, Excel's effectiveness in the marketing of its local exchange service to its existing long distance residential customer base may be significantly compromised unless Excel can assure its sales force that Excel can offer local services nationwide.

Excel has a special interest in ensuring that the OSS functions it receives from ILECs are at parity with the OSS functions that ILECs provide to themselves, their affiliates, and other customers. Like almost all new entrants in the local exchange marketplace, Excel is dependent upon the OSS functions of ILECs in reselling telecommunications services or in using the ILECs' network elements to provide service to end-user customers. Excel is easily distinguished from other CLECs, however, in that it focuses heavily on providing telecommunications services to residential customers, who, as discussed below, are often more vulnerable to service problems associated with any poor quality OSS functions provided by the ILEC. Moreover, Excel will submit a significant number of orders to ILECs for processing, and any backlog that develops as a result of substandard access to an ILEC's OSS could impair Excel's ability to serve its new clients. So long as an ILEC can provide inferior OSS functions to CLECs and their customers without monitoring or sanction, carriers such as Excel will be precluded from effectively competing for their targeted residential customer base.



## **I. THE COMMISSION HAS JURISDICTION OVER OSS FUNCTIONS.**

In its Local Competition Order, the Commission concluded that OSS and the information contained in such systems “fall squarely within the definition of ‘network element’,” and accordingly that regulation of these items falls squarely within the Commission’s jurisdiction to enforce Section 251(c)(3) of the 1996 Act.<sup>4</sup> Similarly, the Commission found that the provision of access to OSS functions fits within the scope of Section 251(c)(4) of the 1996 Act, as a part of services available for resale.<sup>5</sup> In turn, the Commission concluded that the OSS functionality, whether considered a network element or a component of resold services, was therefore subject to the nondiscrimination requirements contained in both of those subsections. *Id.* The Commission reaffirmed these separate conclusions in its Second Order on Reconsideration.<sup>6</sup>

Excel concurs with the Commission’s assessment that these two separate provisions of Section 251(c) require ILECs to provide nondiscriminatory access to OSS functions as an unbundled network element, and to also provide OSS functions in a reasonable and nondiscriminatory fashion to carriers reselling the ILEC’s services. As the agency charged with administering the Act generally

---

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, at 15763, ¶ 516 (1996) (“Local Competition Order”).

<sup>5</sup> *Local Competition Order*, 11 FCC Rcd at 15763, ¶ 517.

<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-96, Second Order on Reconsideration, FCC 96-476, at ¶ 9 (rel. Dec. 13, 1996) (“Second Order on Reconsideration”).

(*see* 47 U.S.C. § 151), and Section 251 in particular (*see* 47 U.S.C. § 251(d)(1)), the Commission has the corresponding responsibility and authority under Section 251(c) to ensure that the nondiscrimination prohibitions contained in this section are effectively monitored and enforced.

The Commission need not rely solely on Section 251, however, in responding to continuing discrimination in the provision of OSS functions to CLECs. Title II of the Act provides the Commission with broad jurisdiction over the practices of common carriers.<sup>7</sup> Indeed, the statute explicitly preserves the Commission’s Section 201 powers as separate from the Commission’s powers under Section 251: “Nothing in [Section 251] shall be construed to limit or otherwise affect the Commission’s authority under Section 201.”<sup>8</sup> Specifically, Section 201 of the Act mandates that “all charges, practices, classifications, and regulations for and in connection with any communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared unlawful.”<sup>9</sup> Likewise, Section 202 of the Act prohibits “unjust or unreasonable discrimination in charges, practices, classifications, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device.”<sup>10</sup>

Commission precedent holds that under these sections of the Act, the Commission *must* exercise jurisdiction to prevent a common carrier’s unjust or unreasonable discrimination not only

---

<sup>7</sup> *See* 47 U.S.C. §§ 201 and 202 (1996).

<sup>8</sup> *Id.*, at § 251(i).

<sup>9</sup> *Id.*, at § 201(b).

<sup>10</sup> *Id.*, at § 202(a).

against end-user customers, but also against other common carriers.<sup>11</sup> As early as 1976, the Commission established,

It is clear . . . that the prohibitions [on resale and shared services] restrict subscribers' use of their communications service, and the carriers must justify the restrictions as just and reasonable under Section 201(b) of the Communications Act, and the case law based thereon. Also, the restrictions and exceptions thereto are discriminatory, and thereby unlawful if it is determined that the discrimination is unjust and unreasonable under Section 202(a) of the Act.<sup>12</sup>

Indeed, the current failure by the ILECs to provide nondiscriminatory access to OSS functions retards successful entry into the local market in much the same way that explicit restrictions on resale slowed the development of competition in the interexchange market until 1976. Given the overwhelming number of problems that CLECs can cite in obtaining nondiscriminatory access to OSS functions,<sup>13</sup> this Commission should now exercise its authority under Sections 201 and 202 -- just as it did in opening up the long distance resale market for competitors -- to examine whether ILEC practices in providing access to their OSSs are unjust, unreasonable, or unjustly or unreasonably discriminatory.

---

<sup>11</sup> See e.g., *Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3103, at ¶ 43 (1990) (if BOCs offer direct access to OSS functions to their enhanced service providers ("ESPs"), they must also offer direct access to independent ESPs); *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, 60 F.C.C. 2d 261 (1976) ("*Resale and Shared Use Order*") (prohibitions on resale and shared services restrict the ability of subscribers to choose their communications service, and thereby violate Title II).

<sup>12</sup> *Resale and Shared Use Order*, 60 F.C.C. 2d at 263, ¶ 4.

<sup>13</sup> See *Petition*, at 34-84.

Section 271 of the 1996 Act also confers jurisdiction upon the Commission to examine BOC provision of access to OSS functions. Among the key components of the “competitive checklist” contained in that section are two provisions requiring the Commission to determine whether the BOC has provided nondiscriminatory access to unbundled network elements and made resale services available on reasonable and nondiscriminatory terms.<sup>14</sup> As the Department of Justice accurately noted in its Evaluation of the Southwestern Bell Communications Section 271 Application, “[T]he checklist requirements of providing resale services and access to unbundled elements would be hollow indeed if the efficiency of -- or deficiencies in -- these ‘wholesale support processes,’ rather than the dictates of the marketplace, determined the number or quality of such items available to competing carriers.”<sup>15</sup> Accordingly, Section 271 is only effective if the Commission can establish the parameters of discriminatory conduct with respect to the BOCs’ provision of unbundled elements and resale services, including the support processes associated with the provision of these items. Thus, independent of its jurisdiction derived from Section 251 and Title II of the Act, the Commission has jurisdiction in the context of Section 271 proceedings to direct the applicant BOC to produce all information relating to its self-provisioning of OSS functions.

---

<sup>14</sup> 47 U.S.C. § 271(c)(2)(b)(ii) and (xiv) (1996).

<sup>15</sup> *Application of SBC Communications Inc. et. al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, Evaluation of the United States Department of Justice, CC Docket No. 97-121, at 26 (filed May 16, 1997) (“DOJ Evaluation”).

**II. THE COMMISSION SHOULD REQUIRE EACH ILEC TO PRODUCE ALL INFORMATION RELATING TO HOW THE ILEC PROVIDES OSS FUNCTIONS AND PROCESSES FOR ITS OWN OPERATIONS, INCLUDING INTERNAL PERFORMANCE BENCHMARKS, STANDARD INTERVALS, AND MONITORING PRACTICES.**

**A. Only Full and Complete Disclosure By ILECs of All Information Relating to OSS Functions and Processes Will Permit the Commission to Enforce the Nondiscrimination Provisions of the Act.**

In its Local Competition Order, this Commission recognized the fundamental role that access to OSS functionalities would play in the development of meaningful local competition.<sup>16</sup> While new entrants can make every effort to provide high-quality, diversified service offerings to customers, their heavy reliance upon the ILEC's network and OSS processes can place CLECs in a precarious position. No matter how promising the merits of their service offerings may be, "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."<sup>17</sup>

This observation by the Commission rings true particularly in the context of the residential markets that Excel seeks to serve. Proven, standard, seamless OSS electronic interfaces are imperative to meeting the demands of Excel's customers. For example, a new residential customer of Excel may need to remain at home to await service installation or repair by the ILEC's service personnel. If the ILEC's service representative does not provision service to a new Excel customer

---

<sup>16</sup> *Local Competition Order*, 11 FCC Rcd at 15763-15764, ¶¶ 516-518.

<sup>17</sup> *Local Competition Order*, 11 FCC Rcd at 15764, ¶ 518.

in a timely or appropriate fashion, that customer will blame their new carrier rather than the ILEC's "behind-the-scenes" operations for the poor or delayed service. Conversely, the same ILEC may provide itself (or even affiliated or third-party carriers) much quicker and more accurate ordering, provisioning, or maintenance functions, meaning that carrier is better able to respond to customer service requests. As a result, the merits of the service offered by Excel are effectively undermined by any ILEC provision of OSS functions under inferior terms and conditions. In turn, the pro-competitive thrust of the 1996 Act is itself undermined as competitive entrants fail to gain (or even lose) market share on the basis of an artificially-imposed technical cost, a factor other than simple consumer demand and quality of service.

While the ILECs may argue that the anticompetitive effect described above is speculative, such an argument in fact supports the point that Excel wishes to make -- neither the Commission nor any CLEC has a full understanding of what performance benchmarks each ILEC establishes for itself, and accordingly, no party other than the ILEC itself understands exactly what level of performance constitutes parity. It should be noted, moreover, that the overwhelming compilation of evidence presented in LCI and CompTel's Petition lends a significant degree of credibility to the claim that several ILECs are in fact discriminating against competitors in providing access to OSS functions. Indeed, approximately 50 pages of the Petition are dedicated solely to documenting some of the allegations against the ILECs in this regard.<sup>18</sup> While these allegations do not by themselves

---

<sup>18</sup> See *Petition*, at 34-84. See also *DOJ Evaluation*, at 68 ("In Pacific Bell's region . . . the ordering and provisioning of resale services by CLECs has been handled manually or is only partially automated by Pacific Bell. After an initial effort to attract customers, both AT&T and MCI were forced to suspend marketing programs because of the growing backlog of orders placed with Pacific Bell for resale services."), and 75 ("[U]nlike SBC's retail operations, a competing carrier with its own separate OSSs is forced to manually enter information twice -- once into the SBC

provide a basis for finding that ILECs have discriminated unreasonably against CLECs, they should prompt the Commission to recognize the potential for discrimination in access to OSS, and act on the Petition to address the ongoing discrimination.

As noted above, a variety of statutory bases direct the Commission and provide it jurisdiction to ensure that OSS functions are provided at parity, both with respect to a particular ILEC itself and with respect to any other carriers (competitive or affiliated) to whom that ILEC may be providing access to OSS functions. However, the Commission cannot define the parameters of nondiscriminatory access if it does not first know what the ILECs' actual standards of measurement are. Thus, the first step the Commission should take in exercising its statutory authority is to instruct each ILEC to fully disclose all information associated with its OSS functions, particularly information regarding any internal performance benchmarks the ILEC has developed in providing its own service, any standard intervals it has developed for performance, and any procedures it uses to monitor and report internal compliance with those benchmarks and intervals. For example, each ILEC should be made to reveal any timeframes it has developed for the processing of service orders, the provision of firm order confirmations, and also any percentage "success rate" thresholds to which it holds its own service operations (*e.g.*, 95% of service orders completed without error). Only a comprehensive analysis of the internal processes of the ILECs will allow the Commission and CLECs to determine conclusively whether ILEC OSS functionalities meet the statutory nondiscrimination standards.

---

interface and a second time into its own OSSs").

In order to make this disclosure meaningful, the Commission must also require ILECs to produce any internally-produced materials that are descriptive of the OSS support process. If ILECs produce only technical information relating to their OSSs, it will take the Commission and CLECs a significant amount of time to piece together the operation of each ILEC's OSS. The provision of OSS access comprises much more than technical interfaces -- the provision of OSS access is clearly a "process" as well, involving training of personnel and operational administration by skilled staff. The ILECs should not be allowed to simply provide technical information relating to its provision of OSS without also providing the information relating to how these OSS processes are administered. In short, the Commission must require each ILEC to provide information relating to internal performance measurements, technical criteria relating to its OSS functions, and also any information that will provide the Commission and CLECs with guidance on the internal administration of the ILEC's OSS processes.

Each ILEC will undoubtedly request that such information be afforded proprietary treatment if disclosed. The Commission has previously declined to treat access to OSS interfaces as proprietary,<sup>19</sup> and given the importance of this issue in promoting the development of competition, it should again refuse to treat the ILECs' OSS information as proprietary. Such treatment will obviate the reason for ordering full disclosure in the first place. The Commission cannot police every instance of discrimination by an ILEC every time a CLEC purchases an unbundled network element or resells the ILEC's services. Ultimately, the Commission must rely upon individual CLECs to bring notice of potential ILEC discrimination to the Commission. In the future, however,

---

<sup>19</sup> See *Local Competition Order*, 11 FCC Rcd at 15766, ¶ 521.



CLECs will simply be unable to determine whether unreasonable discrimination has occurred if the information released by ILECs as a result of this proceeding is kept proprietary. If the Commission wishes to ensure meaningful enforcement of the nondiscrimination standards of the Act, it must give CLECs the tools to assist the Commission in this regard. Thus, the Commission should not only mandate full disclosure of all OSS-related information by ILECs, but it should also make that information publicly available so that any CLEC can measure the level of performance it is receiving from the ILEC.

**B. For the Commission to Track Discriminatory Behavior Effectively, Disclosure Must Be an Ongoing Duty for all ILECs.**

On a related point, Excel submits that ILEC disclosure of information relating to the self-provisioning of OSS functions must be of a continuing nature to be effective. As described immediately above, CLECs will undoubtedly play a significant part in calling instances of unreasonable discrimination by ILECs to the Commission's attention. But just as CLECs will not know when discrimination occurs if the information released by ILECs remains proprietary, so too will outdated information prevent a CLEC from effectively monitoring whether services are being provided at parity. As the Commission noted in the Second Order on Reconsideration, "If an incumbent uses electronic interfaces for its own internal purposes, or offers access to electronic interfaces to its customers or other carriers, the incumbent must offer at least equivalent access to requesting telecommunications carriers."<sup>20</sup> If an ILEC should update its OSS from a system requiring manual intervention to electronic interfaces, or if electronic interfaces should be upgraded by the ILEC, the timeliness and accuracy of the ILEC's self-provisioning will clearly improve. By

---

<sup>20</sup> *Second Order on Reconsideration*, at ¶ 2.

contrast, a CLEC purchasing a network element or reselling that ILECs services may not realize that an increase in internal OSS efficiency has occurred. Accordingly, even if the Commission should direct ILECs to disclose all current information relating to OSS performance benchmarks and service intervals, the Commission must also make such disclosure a continuing obligation, perhaps on a monthly or semi-annual basis.

**III. THE COMMISSION AND OTHER INTERESTED PARTIES DO NOT POSSESS ADEQUATE INFORMATION TO ESTABLISH PERMANENT, GENERALLY APPLICABLE PERFORMANCE BENCHMARKS AT THIS TIME.**

**A. The Commission Should Implement Interim National Standards as Floor for ILEC Performance, But Should Reject Any Proposal to Implement Permanent National Performance Benchmarks At This Time.**

The Petition (at 86) argues that the establishment of absolute guidelines for ILEC performance benchmarks “are a needed prod to the ILECs.” Petitioners offer the LCUG’s manual, “Foundation for Local Competition: Operations Support Systems Requirements for Network Platform and Total Services Resale,” as an option for the Commission to consider in establishing these minimum performance obligations.<sup>21</sup> Excel contends, however, that neither the Commission or any industry consortium is ready at this time to implement permanent minimum national standards for performance. Quite simply, no one knows how each ILEC self-provisions OSS functions, and what the optimal performance benchmarks, standard intervals, and monitoring and reporting procedures will be nationwide, both for larger and smaller ILECs. The Commission should therefore decline to adopt minimum national benchmarks on a permanent basis until it has better information available and can make a meaningful evaluation of the effectiveness of such standards.

---

<sup>21</sup> *Petition*, at Appendix A.

However, the Commission can and should use the LCUG guidelines as an interim measure to promote competitive entry into the local market by ensuring that CLECs receive a quality level of service while the Commission assesses what a permanent nationwide standard of performance should incorporate. Indeed, the Commission should use the LCUG guidelines in conjunction with the information it orders disclosed from ILECs in this proceeding to arrive at a flexible standard of performance for each ILEC. Excel proposes that the LCUG standards operate as a minimum “floor” for ILEC performance, with the Commission requiring superior performance from those ILECs that it finds in fact self-provide OSS functions at higher levels of quality and timeliness than are set forth in the LCUG proposal. If the Commission does not treat the LCUG standards as a floor, those ILECs that perform at a superior level will continue to be able to provide poorer service to CLECs (at the LCUG levels) than these ILECs provide for themselves or for other carriers. By contrast, Excel’s flexible standard proposal ensures that each ILEC will be held to a level of service that promotes competitive entry into the local market, while also preventing ILECs from providing a level of service less than that which they provide for themselves or for other carriers.

**B. Standardization of OSS Functions Will Promote Competitive Entry and Assist the Commission in Measuring Performance and Establishing Permanent Performance Benchmarks.**

New entrants should not be forced to invest additional dollars above and beyond their extensive local infrastructure investment to interface with the diversified operating systems of numerous ILECs. In short, this extra investment is yet another artificial cost that new entrants are being forced to bear in order to enter local markets throughout the country. As LCI noted in its Petition, “LCI, which has more resources than many companies, does not have the resources of an AT&T or MCI, so that undertaking its side of achieving OSS functionality is a substantial effort in

the best of circumstances, but a daunting one if LCI must undertake a separate effort, from scratch, with each RBOC, GTE, and each other company in whose market LCI would like to compete for local service and access.”<sup>22</sup> LCI’s comment applies with equal, if not greater, force to Excel’s effort to penetrate local markets. Excel’s unique marketing infrastructure has permitted it to develop a strong residential customer base in the long distance market, but Excel must establish its ability to provide local exchange service virtually nationwide before it can authorize its independent representatives to market Excel’s local service to these customers. Nonstandard OSS interfaces make the costs of entry significantly higher for Excel, and substantially delay Excel’s ability to offer and provide “one-stop” telecommunications service to its 5 million residential customers nationwide.

While LCI’s Petition did not expressly request that the Commission require standardization in the context of a new rulemaking, Excel contends that this Commission has the authority to require joint planning and standardization by private entities. As the Commission has previously stated, “Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies.”<sup>23</sup> In fact, the Commission noted that it possessed such authority as early as 1980, finding that its powers under Section 201(a) of the Act included the power to compel local exchange carriers

---

<sup>22</sup> *Petition*, at 21.

<sup>23</sup> *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 F.C.C. 2d 292, 314, at ¶ 50 (1983) (“Market Structure NPRM”).

“to acquire facilities and to adopt design criteria that will make interconnection effective.”<sup>24</sup> The Commission has cited a number of additional statutory sources, including Sections 1, 4(i), 201(a), and 214 of the Act, that it claims provide further authority to require joint planning by carriers under its jurisdiction.<sup>25</sup> In short, the Commission has found that joint planning, even if implemented in some limited fashion, can provide “an appropriate mechanism for ensuring the just and reasonable administration of interconnection arrangements.” *Id.*

Even if the Commission should decide that it will not exercise this authority to mandate standardization, Excel believes that the Commission can provide support for the standardization efforts being made through private initiatives. For example, Excel strongly supports the work of the Alliance for Telecommunications Industry Solutions and the American National Standards Institute to establish standardized technical and operational criteria for OSS. Indeed, Excel believes that by directing the disclosure of all information related to OSS functions by ILECs, the Commission can lend invaluable assistance to these groups and expedite the ultimate standardization of OSSs; the Ordering and Billing Forum and other working industry fora can undoubtedly use the information disclosed as a result of the Commission’s order to assess which systems and interfaces are practical for ILECs and achieve maximum efficiency for each particular OSS function.

Because each ILEC may use different OSS specifications and perform at a different level prior to standardization, the Commission will necessarily need to rely on interim guidelines such as the LCUG proposal and a “floor” approach as proposed by Excel to ensure that ILECs provide

---

<sup>24</sup> *MTS and WATS Market Structure*, CC Docket No. 78-72, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 F.C.C. 2d 177, 207, at ¶ 123 (1980).

<sup>25</sup> *See Market Structure NPRM*, at 316, ¶ 51.


nondiscriminatory access to OSS functions. Standardization of OSS functions, however, will make it much simpler for the Commission to measure performance by ILECs and to ultimately establish permanent, generally applicable performance benchmarks. Since each ILEC will be utilizing similar OSSs, presumably all ILECs will perform at approximately the same level. A singular level of performance is of course simpler for CLECs to measure and the Commission to administer than the proposed interim regime, which will require a minimum standard and an assessment by the Commission whether each ILEC's self-provision of OSS functions is in fact superior to that minimum standard. Accordingly, the Commission can and should assist the industry's standardization efforts by providing the industry working groups with the information it obtains as a result of mandating full disclosure from the ILECs in this proceeding.

#### IV. CONCLUSION

For the foregoing reasons, Excel respectfully requests that the Commission initiate a rulemaking and adopt rules consistent with the principles herein.

Respectfully submitted,

J. Christopher Dance  
Robbin Johnson  
Excel Communications, Inc.  
8750 North Central Expressway  
Dallas, TX 75231  
(214) 863-8000 (Tel)  
(214) 863-8215 (Fax)

  
Dana Frix  
C. Joël Van Over  
Swidler & Berlin, Chtd.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)

Counsel for Excel Communications, Inc.

Dated: July 10, 1997